

1 ANDREW R. LIVINGSTON (State Bar No. 148646)
alivingston@orrick.com
2 ERIN M. CONNELL (State Bar No. 223355)
econnell@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
4 405 Howard Street
San Francisco, CA 94105-2669
5 Telephone: +1-415-773-5700
Facsimile: +1-415-773-5759
6

Attorneys for Defendants
7 Chase Home Finance, LLC (on behalf of itself and as successor
in interest to Chase Manhattan Mortgage Corporation) and
8 James Boudreau

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 CHRISTOPHER CLARK and JAMES
13 RENICK, individuals,

14 Plaintiffs,

15 v.

16 CHASE HOME FINANCE, LLC, a Delaware
LLC doing business in California; CHASE
17 MANHATTAN MORTGAGE
CORPORATION, a New Jersey corporation
18 doing business in California; JAMES
BOUDREAU, an individual; and DOES 1-25,

19 Defendants.
20

Case No. 08 CV 0500 JM RBB

**DECLARATION OF ERIN M.
CONNELL IN SUPPORT OF
DEFENDANTS' *EX PARTE*
APPLICATION FOR ORDER
CONSOLIDATING THE HEARINGS
ON PLAINTIFFS' MOTION TO
REMAND TO STATE COURT AND
DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS**

Dept.: 16
Judge: The Hon. Jeffrey T. Miller

1 I, Erin M. Connell, hereby declare:

2 1. I am a member of the State Bar of California and an associate with the firm of
3 Orrick, Herrington & Sutcliffe LLP, attorneys of record for defendants Chase Home Finance,
4 LLC (on behalf of itself and as successor in interest to Chase Manhattan Mortgage Corporation)
5 and James Boudreau. I make this declaration in support of Defendants' *Ex Parte* Application For
6 Order Consolidating The Hearings On Plaintiffs' Motion To Remand To State Court And
7 Defendants' Motion For Judgment On The Pleadings Or, In The Alternative, For Partial
8 Summary Judgment. The facts set forth in this declaration I know to be true of my own personal
9 knowledge, except where such facts are stated to be based on information and belief, and those
10 facts I believe to be true. If called as a witness I could and would testify competently to the
11 matters set forth in this declaration.

12 2. Plaintiffs served Defendants with their First Amended Complaint via U.S. mail.
13 On March 11, 2008, Defendants signed and returned the Notice and Acknowledgement of Receipt
14 accompanying Plaintiffs' First Amended Complaint, thereby completing service pursuant to
15 California Code of Civil Procedure 415.30.

16 3. On March 18, 2008, Defendants removed this case to federal court. Defendants
17 argue in their Notice of Removal that individual defendant James Boudreau is a fraudulent
18 defendant.

19 4. On April 18, 2008, Plaintiffs filed a Motion To Remand To State Court. Plaintiffs
20 noticed their Motion To Remand for hearing on May 16, 2008, exactly 28 calendar days from the
21 date Plaintiffs filed their motion. Plaintiffs argue in their Motion To Remand that Boudreau is not
22 a fraudulent defendant because there is a "possibility" that they may proceed against Boudreau
23 with their sixth cause of action for civil penalties under California Labor Code Sections 558 and
24 2699 (California's Private Attorney's General Act ("PAGA")), and their fifth cause of action for
25 unfair competition under Business & Professions Code Section 17200 ("Section 17200").

26 5. On April 25, 2008, Defendants filed a Motion For Judgment On The Pleadings
27 Pursuant To Rule 12(c) Or, In The Alternative, Motion For Partial Summary Judgment Pursuant
28 To Rule 56. Defendants noticed their motion for the next available hearing date: May 30, 2008.

1 Defendants argue in their Motion that all six of Clark's claims must be dismissed because he
2 undisputedly released them when he signed a Release Agreement as part of the severance
3 package he accepted from Chase. Defendants also argue that Clark's and Renick's third and sixth
4 causes of action seeking penalties must be dismissed because they undisputedly are time barred.

5 6. On April 25, 2008, I telephoned Plaintiffs' counsel, Gregory Douglas, to inform
6 him that Andrew Livingston and I, the two attorneys working on this case and most capable of
7 arguing the Motion to Remand, have prior obligations that conflict with the May 16, 2008 hearing
8 date. I asked Mr. Douglas if Plaintiffs would be willing to continue their hearing date until May
9 30, 2008, so that both motions could be heard on the same date (although Plaintiffs motion could
10 be heard first). Although Mr. Douglas did not give me an answer on that call, during a
11 subsequent telephone call he informed me that although Plaintiffs would likely agree to
12 continuing the hearing date on the Motion to Remand, Plaintiffs wanted Defendants to also
13 continue the hearing date on Defendants' Motion For Judgment On The Pleadings. Mr. Douglas
14 further explained that he did not want to spend the time opposing Defendants' motion in the event
15 that it becomes "moot" if the Court grants Plaintiffs' Motion To Remand. I explained that
16 postponing both hearing dates in part defeated the purpose of consolidating them, as Plaintiffs'
17 suggestion would still require counsel for both parties to make two trips to San Diego. I also
18 asked Plaintiffs' counsel take some time to consider Defendants' request.

19 7. Mr. Livingston and I are unavailable on May 16, 2008 because we are scheduled
20 to attend an all-day conference for the attorneys in the Employment Department of Orrick,
21 Herrington & Sutcliffe, LLP, which is the department in which we both work.

22 8. On April 30, 2008, I left Mr. Douglas a voice mail inquiring about the proposal to
23 consolidate hearing dates. When I did not hear back from him, on May 1, 2008, I left Mr.
24 Douglas another voice mail, this time explaining that if Plaintiffs would not agree to consolidate
25 the hearing dates, Defendants would be left with no choice but to seek *ex parte* relief from the
26 Court. Mr. Douglas returned my call that same day, but would not agree to consolidate the
27 hearing dates, again emphasizing that he did not want to spend time opposing Defendant's motion
28 until the Motion to Remand was adjudicated. Accordingly, I informed Mr. Douglas that unless

1 Plaintiffs would agree, Defendants would file an *ex parte* application on Tuesday, May 6, 2008
2 asking the Court to consolidate the hearings.

3 9. Also on May 1, 2008, Defendants filed their Opposition To Plaintiffs' Motion To
4 Remand. One of the key arguments in Defendants' Opposition is that the Motion to Remand
5 must be denied because Plaintiffs' sixth cause of action against Boudreau is undisputedly time
6 barred (*i.e.*, the exact same argument Defendants make in their Motion For Judgment On The
7 Pleadings).

8 10. By Monday, May 5, 2008, I had not heard from Mr. Douglas. Accordingly, I
9 again gave Mr. Douglas notice of this *ex parte* application, this time in writing. Attached as
10 Exhibit A is a true and correct copy of my written notice to Mr. Douglas. I anticipate that
11 Plaintiffs will oppose this *ex parte* application.

12 11. The pleadings and correspondence in this case reflect that Plaintiffs' counsel is
13 located in Long Beach, California.

14 12. Both Mr. Livingston and I work in the San Francisco office of Orrick, Herrington
15 & Sutcliffe, LLP. Accordingly, attending a hearing in San Diego, California requires significant
16 travel time and entails purchasing an airplane ticket.

17 13. If the Court grants Plaintiff's Motion To Remand, Defendants intend to seek the
18 same relief in state court that are seeking through their pending Motion For Judgment On The
19 Pleadings.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

Exhibit A



ORRICK, HERRINGTON & SMITH
THE ORRICK BUILDING
400 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94102
Tel: 415.773.1400
Fax: 415.773.1401
www.orricksf.com

May 5, 2008

Erin Connell
(415) 773-5969
econnell@orrick.com

VIA FAX AND E-MAIL (PDF)

Gregory A. Douglas, Esq.
United Employees Law Group, P.C.
65 Pine Avenue, Suite 312
Long Beach, CA 90802

Re: Christopher Clark & James Renick v. Chase Home Finance, LLC, Chase Manhattan
Mortgage Corporation & James Boudreau

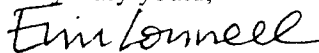
Dear Gregory :

As a follow up to our telephone conversation on Thursday, May 1, 2008, I write to confirm, and to give you notice in writing, that because we could not come to an agreement regarding consolidating the hearing dates on Plaintiffs' Motion to Remand to State Court (currently set for hearing on May 16, 2008) and Defendants' Motion For Judgment On The Pleadings Or, In The Alternative For Partial Summary Judgment (currently set for hearing on May 30, 2008), Defendants plan to file an *Ex Parte* Application tomorrow (May 6, 2008) asking the Court to continue the hearing date on Plaintiffs' motion until May 30, 2008. As I explained on the telephone, the grounds for Defendants' request is that defense counsel is not available on May 16, 2008. Additionally, Defendants believe that the interests of efficiency and judicial economy will best be served by consolidating the two hearings.

Based on our telephone conversation, I understand that Plaintiffs will oppose the *Ex Parte* Application. More specifically, I understand that Plaintiffs would like Defendants to also continue the hearing date on Defendants' motion, as Plaintiffs believe that if Plaintiffs' Motion to Remand is granted, Defendants' motion will become "moot."

If Plaintiffs decide that they will agree to consolidate the hearings as Defendants request, please let me know before tomorrow. If I do not hear from you, we will file our *Ex Parte* Application as planned.

Very truly yours,


Erin M. Connell

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 1890
RECIPIENT ADDRESS 65006375002014915622561006
DESTINATION ID
ST TIME 05/05 09:27
TIME USE 00'53
PAGES SENT 2
RESULT OK



ORRICK, HERRINGTON & SUTCLIFFE LLP
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-2669

tel +1-415-773-5700
fax +1-415-773-5749
WWW.ORRICK.COM

FAX TRANSMISSION

DATE May 5, 2008

NO. OF PAGES
(INCLUDING COVER SHEET) 2

FROM

name

tel

Erin M. Connell

(415) 773-5969

TO

name

company/firm

tel

fax

Gregory A. Douglas

United Employees Law
Group, P.C.

(562) 256-1047

(562) 256-1006

RE *Clark & Renick v. Chase Home Finance, LLC, et al.*

MESSAGE

Please see attached letter giving notice of *ex parte* appearance.

Connell, Erin

From: Brandt, Kate
Sent: Monday, May 05, 2008 9:40 AM
To: Gregory Douglas (gdouglas@hainesfirm.com)
Cc: Livingston, Andrew; Connell, Erin; SF Calendar
Subject: Clark & Renick v. Chase Home Finance, LLC, et al.: Ex Parte Notice
Attachments: Clark.pdf

Mr. Douglas ~

Please find attached a letter from Erin Connell giving notice that defendants plan to file an *ex parte* application with the Court tomorrow, May 6, 2008. A copy of this letter also was faxed to you at 9:27 a.m.

~ Kate Brandt



ORRICK

KATE BRANDT

Secretary to Oswald B. Cousins, Erin M. Connell, Monique Fuentes

ORRICK, HERRINGTON & SUTCLIFFE LLP

THE ORRICK BUILDING

405 HOWARD STREET

SAN FRANCISCO, CA 94105

tel: (415) 773-5607

fax: (415) 773-5759

kbrandt@orrick.com

www.orrick.com

5/6/2008